

REMARKS/ARGUMENTS

In the restriction/election of species requirement dated June 4, 2008, the Examiner delineated the following inventions as being patentably distinct:

Group I, Claims 1-12, drawn to a polymer composition;

Group II, Claims 13-23, drawn to a process for preparing a polymer composition;

Group III, Claim 24, drawn to a process for using a hot melt adhesive;

Group IV, Claim 25, drawn to a hot melt adhesive;

Group V, Claim 26, drawn to a binder; and

Group VI, Claim 27, drawn to a sports product.

The Examiner further required the election of species from the following:

(a) Compositions and articles which contain patentably distinct polymers of at least one thermoplastically processable polymer selected from the group of the (co)polyamides, (co)polyesters, polyurethanes, polyphenylene ethers, polyolefins, (co)polyether-amides, polyaramides, polyether(ether)ketones, and polyetheresteramides; and

(b) Compositions and articles which contain patentably distinct ionic liquids wherein the cation is any of substituents 1-12 set forth in Claim 7 and the anion is any of those selected from the group consisting of phosphate, alkyl phosphates, nitrate, sulfate, alkyl sulfates, aryl sulfates, sulfonate, alkylsulfonates, arylsulfonates, alkyl borates, tosylate, saccharinate, and alkyl carboxylates.

Accordingly, Applicants elect with traverse Group I and Species group (b).

The claims of Groups I-VI are integrally linked as compounds, process for making and method of use.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction.

There is a technical relationship that links all the Groups (I-VI) and it is this technical relationship that defines the contribution which each of the Groups taken as a whole makes over the prior art.

The Examiner asserts that Groups I-VI do not relate to a single general invention concept under PCT Rules 13.1 and 13.2 because they lack the same corresponding technical feature. The Examiner has not considered that the claims in each Group are considered to have related inventions under 37 C.F.R. § 1.475(b) in which the inventions are considered to have unity of invention. Applicants submit that while Rules 13.1 and 13.2 are applicable, 37 C.F.R. § 1.475(b) provides in relevant part that a “national stage application containing claims to different categories of invention as considered to have unity of invention if the claims are drawn to . . . (3) a product, process specially adapted for the manufacture of said product and the use of said product . . . .

Moreover, Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. As the Office has not shown any evidence that a restriction should now be required when the International Preliminary Examination Report did not, restriction is now believed to be improper. Unity of invention has to be considered in the first place only in relation to the independent claim. A dependent claim is one which contains all the features of another claim, and is in the same category of claims as other claims. It does not matter if a dependent claim itself contains a further invention.

Further, the MPEP at § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct and independent inventions.”

For the reasons recited above, Applicants request that the restriction requirement be withdrawn.

Divisional applications filed thereafter claiming the non-elected species should not be subject to double patenting ground of rejection (35 U.S.C. § 121, In re Joyce (Comr. Pat. 1957) 115 USPQ 412).

Applicants further request that should the elected species be found allowable, the Examiner expand the search to include non-elected species.

Applicants submit that the above-identified application is now in condition for examination on the merits and an early notice of such action is earnestly solicited.

Respectfully submitted,

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